IN THE HIGH COURT OF JUDICATURE AT BOMBAY

SPECIAL ORIGINAL JURISDICTION

COMPANY SECRETARIES REFERENCE NO.1 OF 2003

The Institute of Company Secretaries
of India, an statutory Institute
established under the Company
Secretaries Act, 1980 and having
its Head Office at 'ICSI House',
22, Institutional Area, Lodi Road,
New Delhi 110 003. Petitioner

vs.

1. Yezdi J. Master,
of Mumbai, Indian Inhabitant,
aged about 51 years, having his
address at 203, Elphinstone House,
17, Marzban Street, Fort,
Mumbai 400 001.

2. The Union of India,
through the Secretary, Ministry,
of Finance and Company
Affairs, Department of Company
Affairs, New Delhi. Respondents

Mr. G. V. Aiman for the petitioner.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 16th August 2004

ORAL JUDGMENT (PER R. M. LODHA,J.):

This is a reference under Section 21(5) of the Company Secretaries Act, 1980 (for short, 'Act of 1980').

2. Yezdi J. Master (hereinafter referred to as 'the

first respondent') was admitted as an associate member of the Institute of Company Secretaries of India. One Dr. R. T. Acharya filed a complaint against the first respondent on 9th May 1998 before the Council of the Institute of Company Secretaries of India for misconduct allegedly committed by the first respondent. The copy of the said complaint was sent to the first respondent. He filed his written statement. Upon consideration of the complaint and the written statement, the Council was of the prima facie opinion that there was no case of professional or other misconduct on the part of the first respondent and dismissed the complaint. However, the Council decided to initiate suo motu inquiry against the first respondent since he had used the designation of Chartered Accountant along with the designation of Company Secretary which was in contravention of Section 7 of the Act of 1980. The show cause notice was sent to the first respondent on 19th December 1998 calling upon him to show cause why inquiry be not instituted against him for contravention of Section 7 of the Act of 1980. No reply was received from the first respondent and the matter was referred to the disciplinary committee. The disciplinary committee called upon the first respondent to appear before it. The first respondent initially took time on the ground that he was proceeding on foreign tour. The

disciplinary committee, accordingly, adjourned the matter, but thereafter despite sufficient opportunity given to the first respondent, he failed and neglected to remain present before the disciplinary committee. The disciplinary committee, accordingly, proceeded exparte and held the first respondent guilty of professional misconduct under clause (1) of part 2 of Second Schedule for using the designation in contravention of Section 7 of the Act of 1980. The disciplinary committee forwarded its report to the Council. The Council also issued notice to the first respondent and called for his explanation. The first respondent was permitted to remain personally present if he desired to be heard. However, the first respondent did not respond to the notice of the Council. The Council accepted the finding of the disciplinary committee and recommended to this court that he be reprimanded. This is how the reference is before us.

3. We heard Mr.G.V. Aiman, the learned counsel for the Institute of Company Secretaries of India. The first respondent, despite service, has not chosen to appear. Nobody appears for the Central Government as well despite service.

4. That the first respondent Yezdi J. Master

described himself as Chartered Accountant along with the designation of Company Secretary is amply established from the first respondent's letter heads. As a matter of fact there was no rebuttal by the first respondent nor any explanation in this regard.

5. Section 7 of the Act of 1980 provides thus:

> "7. **Members to be known as Company Secretaries**.- Every member of the Institute in practice shall, and any other member may, use the designation of a Company Secretary and no member using such designation shall use any other description, whether in addition thereto or in substitution thereof:
>
> Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other institute whether in India or elsewhere as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Company Secretaries."

6. It was not open and permissible for the first respondent to have used the designation of Chartered Accountant along with the designation of Company Secretary is clear from the bare reading of Section 7. Having done so, he contravened Section 7 of the Act of 1980. The finding of the disciplinary committee that the first respondent in using the designation of Chartered Accountant along with the designation of Company Secretary contravened Section 7 of the Act of

1980 and was guilty of professional misconduct under clause (1) of Part II of the Second Schedule read with Section 7 of the Act of 1980 and accepted by the Council goes unquestioned.

7. For the professional misconduct committed by the first respondent under clause (1) of Part II of Second Schedule read with Section 7 of the Act of 1980, the Council has recommended that first respondent be reprimanded. We are in agreement with the recommendation of the Council.

8. We, accordingly, dispose of this Company Secretary Reference by the following order:

(i) The first respondent is held guilty of professional misconduct under clause (1) of Part II of Second Schedule of the Company Secretaries Act, 1980 for acting in contravention of Section 7 of the said Act.

(ii) The first respondent is reprimanded for the professional misconduct found to have been committed by him.

Certified copy expedited.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)